IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1094 OF 2005

WITH

CIVIL APPLICATION NO.1338 OF 2005

Ali s/o Gulam Reza Abdul
Khairandish ..Appellant.

Vs.

Gangadhar Narayan Mudingonda ..Respondent.

....

Mr.Niranjan Pandit for the Appellant.

Mr.Harshad Rajshirke for the Respondent.

...

CORAM : DR.D.Y.CHANDRACHUD, J.

5th December, 2005.

P.C. :

The grievance of the Appellant is that on 24th October, 2005 the proceedings in the suit were served at 8.45 p.m. On 25th October, 2005, the Court granted an ad interim injunction and kept the matter on the next day. However, since the Learned Judge was

on leave, the ad interim injunction was extended by the Court to which the matter was thereafter transferred on 27th and 28th October, 2005. Ultimately on 29th October, 2005, the order of ad interim injunction was extended till 25th November, 2005. Again it has been stated that on 25th November, 2005 the ad interim injunction was continued thereafter until 19th January, 2006. There is merit in the grievance of the Appellant that the question as to whether a prima facie case has been made out for the grant of an ad interim injunction has not been considered by the Trial Court. It was urged, in my view not without justification, that the effect would be to indefinitely extend the ad interim order of injunction. On behalf of the Appellant, it has been pointed out that the Respondent has suppressed the Deed of partnership dated 29th December, 1997 that was entered into between the Respondent and the father of the Appellant and the Respondent's affidavit dated 5th January, 1995 copies of which have been annexed to the Civil Application. At this stage, since the Learned Trial Judge has yet to apply his mind as to whether a prima facie case for the grant of an ad interim injunction has been made out, it would not be appropriate for this Court to do so. In the

circumstances, this Appeal is disposed of with a

direction that the ad interim injunction which has been granted in favour of the Respondent in S.C. Suit 4497 of 2005 shall continue to operate until 12th December, 2005. Within the aforesaid period, it would be open to the Respondent to apply before the Learned Trial Judge for continuation of the injunction pending the disposal of the Notice of Motion. It would be open to the Appellant, if he is so advised to file his reply before the Learned Trial Judge. The Learned Trial Judge shall dispose of the application for the grant of ad interim relief. The Appeal is accordingly disposed of.

In view of the disposal of the Appeal from Order, the Civil Application is rendered infructuous and is accordingly disposed of.